

**MINUTES FOR THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**October 30, 2003**

## DIVISION ONE

B162676 People (Not for Publication)

 $\mathbf{V}_i$ 

Thomas James H.

The order is modified to reflect that appellant's maximum term of confinement is nine years. As modified, the order is affirmed.

Spencer, P.J.

We concur: Ortega, J.

Vogel (Miriam A.), J.

B164212 Thomas S.L. Kung, et al. (Not for Publication)

**V.**

Ming Ter Chen, et al.

The order is affirmed. Respondent(s) to recover costs on appeal.

Spencer, P.J.

We concur: Vogel (Miriam A.), J.

Mallano, J.

B166626 People (Not for Publication)

 $\mathbf{V}_s$ 

Kevin Dwayne Norman

The judgment is affirmed. The clerk of the court is directed to correct the abstract of judgment to show a conviction by jury and to forward a copy of the corrected abstract of judgment to the Department of Corrections.

Spencer, P.J.

We concur: Ortega, J.

Vogel (Miriam A.), J.

## DIVISON ONE (Continued)

B163546 People (Not for Publication)  
v.  
Ismael Perez, Jr.

The judgment is affirmed. The case is remanded for resentencing as to count two only. In addition, the court is directed to make the corrections to the abstract of judgment as indicated above.

Spencer, P.J.

We concur: Vogel (Miriam A.), J.  
Mallano, J.

B165391      Kusterns      (Not for Publication)  
v.  
Rodriguez

The judgment is vacated and the cause is remanded to the trial court. The appeal is dismissed. The parties are to pay their own costs of the "appeal".

Vogel (Miriam A.), J.

We concur: Spencer, P.J.  
Mallano, J.

B165696      Talamantez      (Not for Publication)  
v.  
Gomez

The order is affirmed. The request for sanctions is denied, but Talamantez is awarded her costs of appeal.

Vogel (Miriam A.), J.

We concur: Ortega, Acting P.J.  
Mallano, J.

October 30, 2003 (Continued)

## DIVISION ONE (Continued)

B164097      Lapensee      (Not for Publication)  
v.  
Empire Properties, et al.

The judgment is vacated and the cause is remanded to the trial court. The appeal is dismissed. The parties are to pay their own costs of this "appeal."

Vogel (Miriam A.), J.

We concur: Spencer, P.J.  
Mallano, J.

B162174      Seifert      (Not for Publication)  
v.  
City of Los Angeles

The judgment (order of dismissal) is affirmed. Respondents are entitled to their costs of appeal.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.  
Mallano, J.

B165661      Yan, et al.      (Not for Publication)  
v.  
Memrad Medical Group, Inc.

The judgment is affirmed. Memrad is entitled to its costs of appeal.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.  
Ortega, J.

DIVISION ONE (Continued)

B164360      Hanks      (Not for Publication)

v.  
Bill Lockyer, Attorney General

The order of dismissal is affirmed. The Attorney General is entitled to his costs of appeal.

Vogel (Miriam A.), J.

We concur: Ortega, Acting P.J.  
Mallano, J.

B163782      Giannini      (Not for Publication)

v.  
Taguchi

The judgment is affirmed. The parties are to bear their own costs of appeal.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.  
Mallano, J.

B157697      Michaels      (Not for Publication)

v.  
Wildenstein & Co., Inc.

The judgment is affirmed. Wildenstein is awarded its costs of appeal.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.  
Mallano, J.

DIVISION ONE (Continued)

B161189      Sepmeyer                      (Not for Publication)  
                 v.  
                 Ralphs Grocery Company

The judgment is affirmed. Ralphs is entitled to its costs of appeal.

Vogel (Miriam A.), J.

We concur:   Ortega, Acting P.J.  
                 Mallano, J.

DIVISION TWO

B160571      People                              (Certified for Publication)  
                 v.  
                 R.J. Reynolds Tobacco Company

The summary judgment is affirmed. The People shall recover costs on appeal.

Ashmann-Gerst, J.

I concur:      Nott, Acting P.J.  
I dissent:      Doi Todd, J. (Opinion)

B164692      People                              (Not for Publication)  
                 v.  
                 Green

The Court:

The judgment (order granting probation) is affirmed.

Boren, P.J., Doi Todd, J., Ashmann-Gerst, J.

October 30, 2003 (Continued)

## DIVISION TWO (Continued)

B162010 People v. Spillman (Not for Publication)

The Court:

The judgment is affirmed.

Nott, Acting P.J., Doi Todd, J., Ashmann-Gerst, J.

B162064      Holguin                      (Not for Publication)  
v.  
Holguin

That portion of the August 22, 2002 order finding that Tammy violated an “admonishment” of the court is reversed. The August 22, 2002 order is otherwise affirmed. The trial court is directed to set aside the September 12, 2002 order. The parties are to bear their own costs.

Nott, Acting P.J.

We concur:   Doi Todd, J.  
                       Ashmann-Gerst, J.

DIVISION THREE

[illegible]

The judgment is reversed.

Aldrich, J.

We concur: Klein, P.J.  
Croskey, J.

### DIVISION THREE (Continued)

B160420 People (Not for Publication)  
v.  
Athans

The judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.  
Croskey, J.

B163375      Thomas R. Adams, Jr., et al.      (Not for Publication)  
v.  
James A. Cavins

The judgment is affirmed. Respondent(s) to recover costs.

Croskey, Acting P.J.

We concur:   Kitching, J.  
                      Aldrich, J.

B168355 Donald M. (Not for Publication)  
v.  
Superior Court, Los Angeles County  
(Los Angeles County Department of Children and Family Services, r.p.i.)

The petition is denied.

Aldrich, J.

We concur: Klein, P.J.  
Croskey, J.

DIVISION THREE (Continued)

B159352      Vicki E. Pollock, etc.      (Certified for Publication)  
v.  
University of Southern California, et al.

The judgment is affirmed. Respondent shall recover costs on appeal. In addition, Pollock and E. Lyn Lemaire are directed to pay respondent \$14,000 jointly and severally as sanctions, and E. Lyn Lemaire is directed to pay the clerk of the court the additional sum of \$3,000, individually as sanctions for prosecuting a frivolous appeal.

Aldrich, J.

We concur:    Croskey, Acting P.J.  
                  Kitching, J.

B159993      People      (Not for Publication)  
v.  
Basulto

The judgment is modified to stay sentence on count 4 pursuant to section 654. In all other respects, the judgment is affirmed.

Aldrich, J.

We concur:    Klein, P.J.  
                  Croskey, J.

B160082      People      (Certified for Partial Publication)  
v.  
Gutierrez

The judgment is affirmed.

Aldrich, J.

We concur:    Klein, P.J.  
                  Croskey, J.



October 30, 2003 (Continued)

### DIVISION THREE (Continued)

B149573 Michael O'Hearn  
v.  
Hillcrest Gym and Fitness Center, Inc., et al.  
Direct Marketing Enterprises, Inc., et al.

Filed order vacating submission order of July 15, 2003. Due to the press of other court business and the complexity of the issues in this case, a short additional amount of time is needed to complete and file the opinion in this matter. Cause resubmitted.

DIVISION FOUR

B164305 People (Not for Publication)  
v.  
Miller

The conviction in count 4 for evading a police officer is reversed, the judgment is modified to strike the subordinate term of eight months for that count, and in all other respects the judgment is affirmed. The trial court shall correct the abstract of judgment accordingly.

Vogel (C.S.), P.J.

We concur: Epstein, J.  
Curry, J.

B163613 People v. Lewis (Not for Publication)

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The judgment is affirmed.

Epstein, J.

We concur: Vogel (C.S.), P.J.  
Curry, J.

## DIVISION FOUR (Continued)

B161796 People (Not for Publication)  
v.  
Rodrigues and Silva

The judgment against Silva only is modified to strike the section 12022, subdivision (a)(1) enhancements imposed as to counts 1 and 2. The trial court is therefore directed to prepare and forward to the Department of Corrections a modified abstract of judgment striking those enhancements. In all other respects, the judgment is affirmed. The judgment against Rodrigues is affirmed.

Hastings, J.

We concur: Vogel (C.S.), P.J.  
Epstein, J.

B161144 People (Not for Publication)  
v.  
Valencia and Loera

The judgments are affirmed.

Hastings, J.

We concur: Vogel (C.S.), P.J.  
Epstein, J.

## DIVISION FIVE

[illegible]

The judgment is affirmed. Respondent(s) to recover costs.

Grignon, J.

We concur:   Turner, P.J.  
                     Mosk, J.

DIVISION FIVE (Continued)

B161694     Hsin Ming Liu  
              v.  
              So Tang

Filed order denying petition for rehearing.

DIVISION SIX

B162824     Burkett                                 (Certified for Publication)  
              v.  
              Capovilla

The Order on Petition of Trustee for Instructions is reversed. The matter is remanded for entry of a new order instructing the successor trustee to distribute the trust assets to the heirs of Erma Mary Olivera, pursuant to paragraph 3.03 of the trust instrument. That portion of the order instructing the successor trustee to pay the administrative expenses of the trust first out of the proceeds of the annuity is affirmed. Costs to appellant.

Yegan, J.

We concur:   Gilbert, P.J.  
                  Coffee, J.

B163136     Randall                                 (Not for Publication)  
              v.  
              Gourley

The judgment is affirmed. Costs to respondents.

Perren, J.

We concur:   Gilbert, P.J.  
                  Coffee, J.

October 30, 2003 (Continued)

## DIVISION SIX (Continued)

B154971      Moses      (Not for Publication)  
v.  
H.R. Textron, Inc., et al.

The summary judgment is affirmed. Costs are awarded to respondents.

Perren, J.

We concur: Gilbert, P.J.  
Coffee, J.

B161049 Franklin (Not for Publication)  
v.  
California State Personnel Board  
State of California, Department of the Youth Authority

The judgment is reversed. The trial court is directed to enter judgment denying the petition for writ of mandate. Department of Youth Authority to recover costs.

Gilbert, P.J.

We concur: Coffee, J.  
Perren, J.

## DIVISION EIGHT

Court convened at Dorsey High School at 9:00 A.M.

Present: Cooper, P.J., Rubin, J., Boland, J., Flier, J. and Emma Jean Amos and Connie Hon, Deputy Clerks .

Each of the following:

B160929 People v. Rodriquez  
B160077 People v. Moore  
B160705 People v. McNeely  
B161695 People v. Khyloyian  
B169130 Diane R. & Rauls S. v. SCLA

Argument waived, cause submitted.

DIVISION EIGHT (Continued)

B161356     Yace, et al.  
              v.  
              Dushane

Merits:  
Argued by Edward Steinbrecher for appellants and by Paul Ash for respondent. Cause submitted.

B161356     People  
              v.  
              Partida

Merits:  
Argued by Verna Wefald for appellant and by Laura J. Hartquist, Deputy Attorney General for respondent. Cause submitted.

Court recessed.

Court reconvened at Dorsey High School at 10:35 A.M.

Present: Cooper, P.J., Rubin, J., Boland, J., Flier, J. and Emma J. Amos and Connie Hon, Deputy Clerks.

B161959     Iron Grip Barbell Company, Inc.,  
              v.  
              Ivanko Barbell Company

Merits:  
Argued by Brian Daucher for appellant and by J. Alan Frederick for respondent. Cause submitted.

B159952     Haneberg  
              v.  
              Dolinger

Merits:  
Argued by Majorie A. Marenus for appellant and by James Wheaton for respondent. Counsel given five days to submit a supplemental letter brief. Cause submitted.

DIVISION EIGHT (Continued)

Court recessed.

Court reconvened at 1:48 P.M.

Present: Cooper, P.J., Rubin, J., Boland, J., Flier, J. and Emma Jean Amos, Deputy Clerk.

B159517     Guzey  
               v.  
               Kapp

Appearances:

Lynn Guzey, appellant in propria persona and Howard Kapp for respondent. Argument waived, cause submitted.

B162289     Rabinowitz  
               v.  
               Rabinowitz, et al.,  
               Estate of Benjamin Rabinowitz

Appearances:

Lynard C. Hinojosa for appellant and no appearance by counsel for respondents. In open court, counsel for appellant informed the court that opposing counsel is willing to waive oral argument. Argument waived, cause submitted.

B160741     Harris, et al.  
               v.  
               Connell

Merits:

Argued by William W. Palmer for appellants and by James C. Harrison for respondent. Cause submitted.

B156866     People  
               v.  
               Aguilar, et al.

Oral argument continued to October 31, 2003, at 9:00 a.m.

DIVISION EIGHT (Continued)

B161761 Schools Excess Liability Fund v. Westchester Fire Insurance  
B158069 Stock v. Law Offices of Herbert Hafif, et al.

Each:

Oral argument continued to November 24, 2003, at 1:00 p.m.

B159381 People v. Thabiti

Oral argument continued to November 25, 2003, at 9:00 a.m.

B160597 Curl v. Roe

Oral argument continued to December 19, 2003, at 1:00 p.m.

Court adjourned at 2:36 P.M.

B165387 Hodur (Not for Publication)  
v.  
The Beverly Hilton Hotel et al.

The judgment is affirmed. The hotel and Mostafa shall recover their costs on appeal.

Rubin, J.

We concur: Cooper, P.J.  
Boland, J.

B164784 Shoyinka (Not for Publication)  
v.  
City of Los Angeles

The judgment is affirmed. Each party to bear their own costs.

Rubin, J.

We concur: Cooper, P.J.  
Boland, J.

October 30, 2003 (Continued)

DIVISION EIGHT (Continued)

B153932      Avila

v.

Steven's Steakhouse & Seafood, et al.

Filed order denying petition for rehearing.



October 30, 2003 (Continued)